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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,209	12/04/2003	Homero Ramirez Tobias	224387	8004
23460	7590	03/28/2006		
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780				
			EXAMINER GREEN, ANTHONY J	
			ART UNIT 1755	PAPER NUMBER

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,209

Applicant(s)

RAMIREZ TOBIAS ET AL.

Examiner

Anthony J. Green

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1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendment after final submitted on 02 March 2006. Currently claims 1-3 and 5 are pending. Based on the discovery of new prior art the finality of the rejection of the last Office action is withdrawn and new rejections lodged below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Specification No. 08-217519.

The abstract teaches an antibacterial cement for preventing the inner and outer wall surfaces and the ceiling surface in a building and facility constructed with concrete and mortar from being stained by bacteria by uniformly dispersing and mixing an antibacterial component for sterilizing microorganisms with a cement material which is a base raw material of concrete or mortar. Paragraph [0011] of the machine translation states that phenols may be utilized in the invention. The examiner has requested a formal translation of this document which will be forwarded to applicant upon receipt.

The instant claims are met by the reference. It is the position of the examiner that the term "uniformly" is synonymous with homogeneously.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Specification No. 08-225415.

The abstract teaches the incorporation of antimicrobial agents in cement or gypsum. Paragraph [0001] of the machine translation teaches the use in concrete structures for wall materials. Paragraph [0008] teaches that the antimicrobial solutions are homogeneously distributed in the concrete or mortar. Paragraph [0011] teaches the use of phenols as the antimicrobial agent.

The instant claims are met by the reference.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Specification No. 08-217519.

The reference was discussed previously.

While the reference does not teach the formation of a concrete composition having the claimed amounts it would have been obvious for one of ordinary skill in the

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art to utilize any known concrete composition without producing any unexpected results absent showing otherwise. That is, applicant's concrete composition is made up of known components and it is known in the art to vary the amounts of the components depending on what is needed or desired. As for the use of same phenol derivatives it does broadly teach the use of phenols and therefore in the absence of unexpected results it would have been obvious to utilize any phenol compound in the reference absent evidence to the contrary.

7. Claims 3 and 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Specification No. 08-225415.

The reference was discussed previously.

While the reference does not teach the formation of a concrete composition having the claimed amounts it would have been obvious for one of ordinary skill in the art to utilize any known concrete composition without producing any unexpected results absent showing otherwise. That is, applicant's concrete composition is made up of known components and it is known in the art to vary the amounts of the components depending on what is needed or desired. While the reference does not teach the use of same phenol derivatives it does broadly teach the use of phenols and therefore in the absence of unexpected results it would have been obvious to utilize any phenol compound in the reference absent evidence to the contrary.

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8. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russian Patent Specification No. 2101248 in view of Japanese Patent Specification No. 08-217519 and Japanese Patent Specification No. 08-225415.

The abstract of the Russian patent teaches a concrete composition used as a protective coating for equipment subject to biological attack comprising a biocidal additive (alkylpolybenzyl-pyridine chloride).

Japanese Patent Specification No. 08-217519 teaches that it is known to uniformly disperse biocidal additives in cement.

Japanese Patent Specification No. 08-225415 teaches that it is known to homogeneous disperse antimicrobial additives in cement.

The instant claims are obvious over the reference. While the primary reference does not teach that the biocidal additive is homogeneously dispersed in the concrete composition, the secondary references teach that it is known in the art to uniformly or homogeneously disperse biocidal agents in concrete compositions. Accordingly it would have been obvious to uniformly disperse the biocidal agents of the primary reference in the concrete composition without producing any unexpected results and thus arrive at the instant invention absent evidence to the contrary. As for claims 2 and 5 the agents recited in the these claims are all well known biocidal agents and accordingly it would have been obvious to substitute them for the agent of the primary reference absent evidence to the contrary. With respect to claim 3 while the reference does not teach the formation of a concrete composition having the claimed amounts it would have been obvious for one of ordinary skill in the art to utilize any known concrete

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composition without producing any unexpected results absent showing otherwise. That is, applicant's concrete composition is made up of known components and it is known in the art to vary the amounts of the components depending on what is needed or desired.

9. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soviet Union Patent Specification No. 1801957 in view of Japanese Patent Specification No. 08-217519.

The abstract of the Soviet patent teaches a Portland cement and bactericide additive in the form of quaternary ammonium salts which is used in the building industry to produce a concrete in the building industry.

Japanese Patent Specification No. 08-217519 teaches that it is known to uniformly disperse biocidal additives in cement.

Japanese Patent Specification No. 08-225415 teaches that it is known to homogeneously disperse antimicrobial additives in cement.

The instant claims are obvious over the reference. While the primary reference does not teach that the biocidal additive is homogeneously dispersed in the concrete composition, the secondary references teach that it is known in the art to uniformly or homogeneously disperse biocidal agents in concrete compositions. Accordingly it would have been obvious to uniformly disperse the biocidal agents of the primary reference in the concrete composition without producing any unexpected results and thus arrive at the instant invention absent evidence to the contrary. As for claim 2 the reference teaches the use of quaternary ammonium salts of which the alkyldimethyl

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benzylammonium chloride is an example of. With respect to claim 3 while the reference does not teach the formation of a concrete composition having the claimed amounts it would have been obvious for one of ordinary skill in the art to utilize any known concrete composition without producing any unexpected results absent showing otherwise. That is, applicant's concrete composition is made up of known components and it is known in the art to vary the amounts of the components depending on what is needed or desired. As for claim 5 the agents recited in the this claim are all well known biocidal agents accordingly it would have been obvious to substitute them for the agent of the primary reference absent evidence to the contrary. As for the limitation of floor and wall coverings the reference teaches the use of concrete in the building industry.

### ***References Cited By The Examiner***

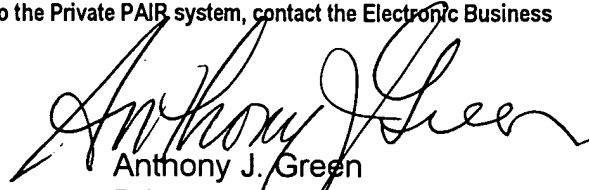
10. The remaining references are cited as showing the general state of the art and as such, they are not seen to teach or fairly suggest the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony J. Green  
Primary Examiner  
Art Unit 1755

ajg  
March 17, 2006